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SUBJECT: Supreme Court Refuses To Appoint Uribe Nominee for
Prosecutor General

CLASSIFIED BY: Mark Wells, Political Counselor; REASON: 1.4(B), (D)

Summary

¶1. (C) Tensions between President Alvaro Uribe and the Supreme Court flared September 16 when the Court refused to accept Uribe's slate of three nominees for Prosecutor General. Questioning the suitability, honesty, and independence of the proposed candidates, the Court voted to declare that the Executive had failed to produce a valid slate. The GOC responded that the slate was complete and insisted that the Court fulfill its constitutional duty to elect a Prosecutor General from the slate presented. Privately, the magistrates told us they worry that an Uribe-appointed Prosecutor General will lack the objectivity necessary to lead the Colombian justice system during a particularly difficult period. End summary.

Court: "There Is No Slate"

¶2. (U) On July 7, Uribe presented his slate ("terna" in Spanish) of three candidates to replace Mario Iguarán as Prosecutor General ("Fiscal General"). Iguarán left office at the end of July, leaving Acting Prosecutor General Guillermo Mendoza in charge. According to Article 249 of the Colombian Constitution, the Supreme Court is empowered to select the Prosecutor General, who unlike most governments in the region is an independent figure under the Judicial branch rather than the Executive. The slate consisted of former Uribe Minister of Defense and OAS Ambassador Camilo Ospina, former Uribe lawyer Virginia Uribe, and former Council of State magistrate Juan Angel Palacio. After two months of deliberations, on September 16 the Supreme Court decided 13-8 that the President's nominees failed to meet the constitutional qualifications for Prosecutor General. As a result, the Court determined that Uribe had not presented a proper slate.

Government: "Court Must Select From Slate Presented"

¶3. (U) In a communiqué released by the Presidency on September 18, the GOC argued that the President has the sole authority to compose

and submit the slate of nominees; the Court must select from those presented. The GOC insisted that each nominee met the constitutional qualifications (be a Colombian citizen, be a lawyer, not have been convicted of a crime, and have practiced law in the public or private sector). Those criteria having been met, the GOC called on the Court to proceed with its vote on the slate presented. President Uribe said publicly September 19 that he selected the candidates with great care given the importance his Administration has given to state security.

Magistrates Ventilate

¶4. (C) In a conversation with Emboffs on September 21, Supreme Court President Augusto Ibanez and Vice President Jaime Arrubla said that all three of Uribe's candidates were problematic. Ospina, Ibanez said, was Minister of Defense for Uribe when the most egregious acts of the extrajudicial executions were allegedly carried out. How could Ospina be trusted to prosecute such cases, he asked. Ospina also had connections to shadowy underworld figure Victor Carranza, Ibanez asserted. Palacios, said Arrubla, was alleged to have been involved in influence peddling when serving previously as a magistrate. As for Virginia Uribe, Arrubla pointed out that during interviews with the Court she displayed ignorance of the criminal justice system, specifically of its conversion to an accusatory system over the last five years.

¶5. (C) Why did the Court deliberate for two months over the slate? Arrubla pointed to the Court's August 24 meeting with Uribe when they informed him of the inevitable deadlock and suggested he reconfigure his nominations. Arrubla said there were rumors that Uribe was indeed reconsidering. Just days before the Court's decision, Arrubla claimed, two unnamed ministers from Uribe's cabinet had met with Arrubla to strategize over how to convince Uribe to change his mind. Ibanez said that during the September 16 session of the Court, after four hours of debate, he finally put the question to the plenary of whether there was, in fact, a proper slate. He said the eight votes against the decision were a mixture of strict constructionists who doubted the Court's authority to return the slate and some support for Camilo Ospina, who is generally thought to be the President's preferred candidate. The magistrates cited one case from the Samper Administration (1994-1998) in which the three candidates for a similarly appointed position withdrew, forcing the President to name a new slate.

¶6. (C) The magistrates' key concern was the independence of the Prosecutor General. They said the Constitution of 1991 intentionally offset the four-terms of the President and the Prosecutor General so that the outgoing President would select the Prosecutor General who would oversee the next administration. Uribe's perpetuation in office, they said, greatly complicated the process of selecting the Prosecutor General. Ibanez said that even former Prosecutor General Iguaran, appointed by Uribe before he was re-elected in 2006, was unwilling to prosecute certain Administration officials. The magistrates worried that Ospina similarly would not carry out his duties autonomously. They said the Colombian justice system was facing too many critical issues to have a Prosecutor General subordinated to the President. Asked whether the Court would have decided differently had the law permitting a third term for Uribe not been passed, the magistrates said no.

Comment: Impasse

¶7. (C) The Court's overtly political move is the latest in its rivalry with President Uribe. For his part, Uribe clearly handed the Court a slate whose only viable candidate was his confidante Ospina. There is no appeal to the Supreme Court's decision, which spells an impasse for the two branches of government. Meanwhile, the Prosecutor General's Office will soon reach two months under a caretaker administration.

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